

EXHIBIT A



September 26, 2018

Dear Mayor and Council,

We would like to follow through with our commitment to advise on an important matter to the venue community, Agent of Change. In June 2017, a staff version of the policy was removed from Council agenda, after significant outcry from our group, as well as representatives from Austin Neighborhood Council and Hotel Lodging Association. After months of stakeholder groups and research, the staff proposal missed the mark, and actually increased risk and cost for the venue community. At that time, Music Venue Alliance agreed to work with the other stakeholders to provide an alternative draft, with unanimous support.

Since the item was pulled, there has been significant change in personnel in the Economic Development Department. Agent of Change has been passed around multiple times, and this has caused serious delays. The purpose of this letter is to say that we are still unable to support the most recent effort presented to us by staff, and that we are ready to make our recommendation. This recommendation meets the needs of the venue community, and reflects input from ANC, HLA and DAA.

Agent of Change

This plan seeks to establish clear guidelines for building new developments where entertainment establishments and residents/guests are in close proximity, determine who the responsible party is between existing entertainment establishments and residences/hotels, as well as provide clear protocol for responsible operation of entertainment establishments. The purpose is to preserve quality of life for residents, while securing stability for hotels and entertainment businesses. The method will be a combination of acknowledgement of the proximity by all parties, disclosure to new buyers/tenants of the proximity, and implementation of proven and verifiable soundproofing and sound mitigating measures.

Entertainment Establishment includes music venues, bars, nightclubs, and any business with an outdoor music permit. This will provide protection for investors, developers, residents, and guests.

So long as an entertainment establishment is operating within legal limits, per the Sound Ordinance, the sound emanating from the establishment is not a public or private nuisance. Therefore, residents and guests acknowledge that legal sound should not put an

entertainment establishment at risk of loss of business or closure. Compliance with the Sound Ordinance will be consistently monitored and enforced by the City.

When a new hotel or residence seeks to build within a distance (to be tied to land use tier, so that the distance will be variable by area and density) of an entertainment establishment, plans for soundproofing/mitigating measures will be presented and approved in order to receive a building permit. Measures will need to achieve 45 dba within residential and hotel units, per the recommendation of the World Health Organization. The new development and established business may negotiate whether it is most effective to only proof the new building, install technology or insulate the entertainment business, or a combination of the two. Flight path construction will inform this process.

For existing entertainment establishments, residences and hotels:

Clear disclosure must be made on sale and lease agreements for residents purchasing/leasing units within the designated distance from an entertainment establishment.

In order to identify which venues need this protection, we propose a new land use for live music venue. After more than a year's time of consideration, and vetting from multiple City departments, MVA has arrived at a definition of live music venue that is narrowly tailored and captures the essential elements. We ask that this be the defined new land use:

Preamble

Defining a cultural asset requires a general "common sense" reading that can be flexible over time. Verifiable elements must show that music is the primary driver of business, and/or the business is a music destination. This can be shown by the existence of a combination of factors that show a relationship with the musicians that does not exist in businesses that provide music as atmosphere.

1) This begins with a process by which the venue clearly articulates to the artist the ability of an artist to receive payment for work by percentage of sales (bar and/or door cover) i.e. sales performance payment, guarantee (in writing) i.e. standard contract, or another mutually beneficial formal agreement, and

2) A factor test.

A retail business that is a destination for live music consumers and its music programming is the primary driver of its business, as indicated by the presence of at least five (5) of the following: (1) defined performance and audience space, (2) mixing desk, PA system, and lighting rig, (3) back line, (4) at least two of: sound engineer, booker, promoter, stage manager, security personnel, (5) applies cover charge to some music performance through ticketing or front door entrance fee, (6)

marketing of specific acts through gig listings in printed and/or electronic publications, (7) hours of operation coincide with performance times, (8) produces music performances at least five (5) days a week.

We cannot support a triggering mechanism based on additional registration or permitting. We also cannot support a protection for some venues, but not others.

In order for ANC, DAA, and HLA to agree to these terms, we committed to asking for improvements to sound monitoring and violation enforcement. We believe it is the City's duty to create fair and transparent guidelines, and to enforce them consistently. Following are our recommendations on how that should be done.

- The Outdoor Music Venue permit needs to be renamed Outdoor Amplified Sound Permit. Not all permit holders are music venues.
- Renewal of this permit should be extended from one year to two years. Businesses with no violations, not simply complaints, should receive an abbreviated pass through renewal.
- Outdoor Amplified Sound Permits should only be granted to businesses that direct sound to an area enclosed within its property perimeter, not to a public space.
- Businesses without an Outdoor Amplified Sound Permit should be consistently held to compliance with Austin's Sound Ordinance.
- Outdoor Amplified Sound Permits will still include individualized sound impact plans. These sound impact plans should contain not only dba limits, but dbc limits as well. Dbc data should be cataloged over a two-year period. At the end of the study period, the permitting department should make a recommendation on dbc levels in the Sound Ordinance. The recommendation should reflect workable levels as reflected by the collected data.
- Sound monitoring should begin with technology. There are at least two companies that have provided workups for pilot programs in the downtown area. These companies make sensors that can be placed on light poles to collect sound and other atmospheric measures. This data can be seen remotely. Either DAA, and/or the City, need to commit to installing this technology as soon as possible. Sound monitoring by humans is faulty, inconsistent, and expensive.
- When an overage is recorded, or a sound complaint made, swift response by the Music Office's night and weekend ambassador should follow. This person must be deputized with citation writing authority. Notices of overage, without any consequence, have proved meaningless and wasteful. APD or other municipal enforcement agencies are not equipped, and are not well-suited for, this role.
- When an establishment has earned enough citations in the requisite period, suspension of the Outdoor Amplified Sound Permit must follow, every time. This is not currently happening.

- When it is determined that an establishment is operating within the law, but regular operations still present an inconvenience for neighbors, MVA members have agreed to work with DAA and HLA on partnered arrangements for joint advertising and concessions as means of recovering unhappy guests/residents.

We are confident that when the rules are consistently enforced, it will become clear that music venues are committed to staying compliant.

Please consider MVA a resource and partner. We are grateful for your diligent efforts to make the best decisions for Austin.

Take care,

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